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ABB INC.	LEGAL DEPARTMENT-4U6	29801 EUCLID AVENUE	WILLOUGHBY, TERRENCE RONIQUE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFERY L. McELRAY SR., CARL J. LaPLACE, DAVID G.
HART, WILLIAM M. EGOLF and GRAEME N. McCLURE

Appeal 2009-005727
Application 10/705,645
Technology Center 2800

Before KENNETH W. HAIRSTON, CARL W. WHITEHEAD, JR. and
WILLIAM BAUMEISTER, *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-3, 6, 8, 10, 13, 15-17, 19, 36-40, 42 and 43. *See* Appeal Brief 2. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

BACKGROUND OF THE INVENTION

Appellants' invention is directed a method for controlling a recloser for an electrical power line. *See* Appeal Brief 2.

Claim 1, which further illustrates the invention, follows:

1. A method for controlling a recloser for an electrical power line, comprising:

determining a protection setting group, the protection setting group having at least one associated variable, wherein the at least one associated variable comprises one of time of day, day of week, and month of year;

determining a present condition of the at least one associated variable;

determining a behavior function for the recloser based on the protection setting group and the present condition; and

adaptively setting the recloser to function in accordance with the behavior function.

The Rejection

Claims 1-3, 6, 8, 10, 13, 15-17, 19, 36, 37, 39, 42 and 43 stand rejected under 35 U.S.C. § 102(b), as being unpatentable over Buell (U.S. Patent 5,768,079). *See* Answer 3-6.

Claims 38 and 40 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Buell. *See* Answer 6-7.

ISSUE

Does Buell disclose a protection setting group having one associated variable that comprises one of a time of day, day of the week and month of the year by distinguishing between gradual changes due to daily fluctuations?

PRINCIPLE OF LAWS

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

ANALYSIS

Appellants argue that the Examiner improperly interprets the following passage in Buell to disclose the claimed associated variable comprises one of the time of day, day of the week and month of the year (Appeal Brief 5):

“The adaptive fault protection schemes described herein, unlike the traditional (i.e., absolute) protection schemes, are capable of distinguishing between gradual changes in load current, due to normal, daily and/or seasonal fluctuations, versus sudden, more significant fluctuations due to

Appeal 2009-005727
Application 10/705,645

potential fault conditions (e.g., downed powerlines and phase-to-phase faults)."

Buell (column 3, lines 19-28).

Appellants argue that Buell does not monitor or in any way determine the time of day, day of the week or month of the year as claimed because Buell's recloser distinguishes between gradual changes in load current, and they therefore conclude that independent claims 1, 8, and 15 are allowable over Buell. *See* Appeal Brief 4-6. Appellants also argue that claims 36, 37, 39, 42 and 43 are allowable because Buell does not teach "the selection of the control scheme based on one or more variables." *See id* at 6.

We do not find the Appellants' arguments to be persuasive. First, none of the independent claims 1, 8, 15 and 36 precludes monitoring the load current of a powerline. Second, as the Examiner asserts, Buell's monitoring of daily gradual changes in load current discloses the prevailing condition of at least one claimed associated variable (day of the week). *See* Answer 8. Thus, the anticipation rejection of these claims is affirmed.

For the above reasons, we are also affirming the rejections of dependent claims 2, 3, 6, 10, 13, 16, 17, 19, 37, 38, 39, 40, 42 and 43, whose merits are not separately argued. *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987) (dependent claims, not argued separately, fall with the independent claim, even though the dependent claims were rejected based on additional (or different) references.).

DECISION

We affirm the Examiner's 35 U.S.C. § 102(b) rejection of claims 1-3, 6, 8, 10, 13, 15-17, 19, 36, 37, 39, 42 and 43 over Buell.

Appeal 2009-005727
Application 10/705,645

We affirm the Examiner's 35 U.S.C. § 103(a) rejection of claims 38 and 40 over Buell.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

ORDER

AFFIRMED

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